

IN THE MATTER OF:

WILLIAM R. CARROLL, et al.

-v-

BENJAMIN J. MARTIN, et al.

BRENT KEENER
FEBRUARY 5, 2003

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Maryland, D.C., & Northern Virginia
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Condensed Transcript with Word Index

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 (Northern Division)

4 WILLIAM R. CARROLL, *
5 et al. *
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1 STIPULATIONS
 2 It is stipulated and agreed by and
 3 between counsel for the respective parties that the
 4 reading and signing of this deposition by the
 5 witness be and the same are hereby waived.
 6 It is further stipulated and agreed
 7 that the filing of this deposition with the Clerk
 8 of the Court be and the same is hereby waived.
 9 *****
 10 (Exhibits 1 through 4 premarked.)
 11 BRENT KEENER,
 12 called for examination, having been duly sworn to
 13 tell the truth, the whole truth and nothing but the
 14 truth, testified as follows:
 15 EXAMINATION BY MR. BELSKY:
 16 Q I'm sure that your -- well, my name is
 17 Henry Belsky, as you know, and I'm sure your
 18 attorney has already explained everything about a
 19 deposition. Have you ever had your deposition
 20 taken before?
 21 A Yeah.

2 (Pages 2 to 5)

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1 Q On how many occasions?
2 A Just once.
3 Q Was that relative to an accident too?
4 A No.
5 Q What type of matter was that in?
6 A That was in regards to a workers' comp
7 claim.
8 Q And where was that taken at?
9 A It was in Lancaster.
10 Q Was it just before the commission or was
11 it in court?
12 A It wasn't in the court, it was in a
13 setting like this.
14 Q Okay. If I ask you any questions you
15 don't understand, just please tell me to rephrase
16 it, and if you give me an answer I'll assume we're
17 communicating. If you want to take a break, that's
18 fine, I don't think we're going to be very long.
19 A Okay.
20 Q But if you need anything, I don't have a
21 problem stopping. You have to answer with words,

1 Q Is it your testimony that we've already
2 been supplied with all the other information in the
3 other discovery requests or court submissions?
4 A As far as I know.
5 Q Okay. I'm going to start off probably
6 right at the get go. Can you identify this
7 document? And I've marked it as Exhibit 2. It's
8 the employer questionnaire.
9 A Yeah, this is a, this is a document
10 that's used for unemployment compensation.
11 Q That's not a history of the termination
12 of the employee?
13 A It's a document that's presented for the
14 Lancaster County unemployment compensation to
15 determine whether or not an employee is eligible
16 for unemployment.
17 Q And who fills that out?
18 A This was filled out by my assistant, Jan
19 Wenger.
20 Q And does the employee sign that?
21 A No.

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1 not nods of heads.
2 A Okay.
3 Q And that way she can take it down. And
4 please wait until whoever is asking a question to
5 finish their question so that she can take down the
6 question and answer. Sometimes as we talk in
7 normal language we override each other. That
8 doesn't do her any good.
9 Now, having said that, I'm going to show
10 you what I previously marked as Exhibit 1, which is
11 a notice of deposition.
12 A Okay.
13 Q And I understand from counsel that the
14 only additional records that you brought with you
15 today were the telephone records on the date of the
16 accident; is that correct?
17 A Uh-huh. Yes.
18 Q Is it your testimony that we have
19 already been supplied with all the -- have you ever
20 seen that before?
21 A Yes, yes.

1 Q On question number 5 it says please
2 indicate the reason the claimant, which in this
3 case was Ben Martin, was separated on the reverse
4 side of the form or on a separate sheet of paper
5 and return it with this form to the office named
6 above. A statement describing the final incident
7 which caused the claimant to be separated should be
8 provided and signed by an individual with firsthand
9 information concerning the incident. Is there
10 another document, because I don't know who would
11 have firsthand knowledge of the incident other
12 than -- well, who is the person that performed that
13 function?
14 A That performed what function?
15 Q Who provided the written statement who
16 had firsthand knowledge?
17 A This statement?
18 Q Well, I don't know what statement that's
19 referring to, it's not my form, so if that's the
20 statement then --
21 A I wrote down the information on the

3 (Pages 6 to 9)

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1 additional information.

2 Q So you had firsthand knowledge on the
3 incidents that came to his termination?

4 A That's correct.

5 Q Now, it indicated in there, if I
6 remember correctly, that there was a prior accident
7 to this incident?

8 A Yes, that's correct.

9 Q Is that included in his personnel file?
10 I didn't see that.

11 A It would be in the driver file.

12 Q Again, I may have gotten it and I don't
13 recognize what it is.

14 MR. MANN: Let me see if we can find it
15 for you.

16 MR. BELSKY: I appreciate it.

17 Q While he's looking for that I'll ask you
18 if you can identify this document because I don't
19 know what this is either?

20 A This is a personnel action form, it's a
21 form used by our company to determine different

Page 12

1 not sure, maybe you can --

2 THE WITNESS: Well, yeah.
3 (Pause in the proceedings.)

4 Q I forgot to ask you a preliminary
5 question. Why don't you state your name for the
6 record.

7 A Okay. My name is Brent Keener.

8 Q Keener?

9 A Keener.

10 Q Mr. Keener, what is your affiliation
11 with the defendant in this case, LamTech?

12 A Yeah, I'm the vice president of human
13 resources and safety.

14 Q And how long have you been vice
15 president of human resources and safety?

16 A I have been vice president for about two
17 years, been with the organization for a little over
18 eight years.

19 Q Can you describe your job function?

20 A Yeah, I'm in charge of the human
21 resources department and oversee the safety

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1 personnel action that's taken.

2 Q What action is that?

3 A On this it was a termination discharge
4 for Ben Martin.

5 Q Just so the record is clear that's what
6 I previously marked as Exhibit 3?

7 A (Nodding head indicating yes.)

8 Q And what was the reason for his
9 termination?

10 A The reason was because he had two
11 incidences, two vehicular incidences within his
12 first, it was about three and a half months
13 employment.

14 Q When you say incidences you mean two
15 accidents in the first three months?

16 A Correct.

17 Q Do you remember the -- well, I'll wait
18 for your counsel to see if he can find them.

19 MR. MANN: Where it's going to be is in
20 that one thing that we were looking at, you know,
21 the evaluation, the three month evaluation. I'm

1 administration as well.

2 Q And you have had that position for two
3 years?

4 A Right.

5 Q On the date of this accident what was
6 your position with the company?

7 A I was also, at that time I was human
8 resources manager and vice president of
9 distribution.

10 Q So you were not safety --

11 A I was in charge of safety as well.

12 Q Okay. And how long have you held that
13 position?

14 A I had been human resources manager ever
15 since, for that eight years and had the
16 distribution, vice president of distribution, I had
17 just recently had that for about, about a month
18 perhaps prior to the incident.

19 Q And LamTech is what type of corporation;
20 is it a public corporation, a private corporation?

21 A Privately held.

4 (Pages 10 to 13)

1 Q Do you have any equity position in the
2 company?

3 A No.

4 Q Who has the equity positions in the
5 company?

6 A Ray Martin is our CEO, he is an owner,
7 and then there are three other owners as well with
8 minority --

9 Q So Ray Martin is the majority owner?

10 A Yes.

11 Q Is he active in the business?

12 A Yes.

13 Q And what is his title?

14 A CEO.

15 MR. MANN: Okay. I'll show you this
16 form. I don't think that was actually part of the
17 file. That's for the prior. We disclosed that in
18 the Answers to Interrogatories that I told you we
19 had.

20 MR. BELSKY: I'll have this marked.

21 MR. MANN: Yeah, okay.

1 positions in the organization where he could, that
2 he could do and we weren't able to come up with any
3 and so his employment was then subsequently
4 terminated.

5 Q Okay. Well, did you make a
6 determination of fault?

7 A No.

8 Q Did you ask him how the accident
9 happened?

10 A Yes.

11 Q And did he give you a written report?

12 A No.

13 Q What did he tell you how the accident
14 happened?

15 MR. MANN: Objection. I'm going to
16 instruct him not to answer that.

17 MR. BELSKY: And why?

18 MR. MANN: It's a conversation that
19 Mr. Keener had with Mr. Martin and it was for the
20 purposes of this claim, this insurance claim and
21 it's work product discussion between two parties.

1 MR. BELSKY: So I have it, but I already
2 had some documents marked so I'll take it out of
3 order. We'll ask that the driver's accident report
4 of the accident of 11-30-00 be marked as Deposition
5 Exhibit 5.

6 (Exhibits 5 marked.)

7 Q Now, can you just take me step by step
8 the actions that was taken by the company to
9 terminate this driver?

10 A Yeah, there was, he had had the first
11 incident about a month or two months after he had
12 been hired where he hit a tree, a tree limb. We
13 deliver, we drive box trucks, we deliver in
14 residential areas, oftentimes townships and
15 municipalities don't trim the trees back as often
16 as well as they maybe should, and so we were
17 willing to overlook that. When he had the second
18 incident and there was some question as to his
19 fault, we made the determination at that point that
20 we did not want him driving trucks anymore. So we
21 began looking around to see if there were other

1 Q When did you first consult an attorney
2 in this case?

3 A It wasn't until we found out about the
4 lawsuit.

5 Q When did you first notify your carrier?

6 A The day of the incident.

7 Q Was it before or after you talked to
8 Mr. Martin?

9 A I believe it was after.

10 Q So you spoke to him, Mr. Martin first,
11 then you notified your carrier?

12 A Yes.

13 MR. BELSKY: I don't see how you can --

14 MR. MANN: Ask him what the purpose of
15 speaking to him was.

16 Q What was the purpose of speaking to him?

17 A To determine how to file a claim or what
18 to say to the insurance carrier.

19 Q Okay. And was it also the purpose to
20 find out whether he should be terminated?

21 A No.

1 Q Okay. Could you just give me the
 2 essence of the conversation between you and him at
 3 that meeting?

4 A Sure.

5 Q Or, and the other gentleman.

6 A Sure. I basically told him that, you
 7 know, we had had two incidences within, you know,
 8 the first couple months, I told him that we had
 9 looked around for another position in the company
 10 and that we didn't have any available that we
 11 thought would suit him and so that we were going to
 12 have to terminate his employment. He said, you
 13 know, that's fine, he wasn't angry or wasn't upset,
 14 he said he understood, and we shook hands and
 15 parted ways.

16 Q You were aware that in 1998 he had his
 17 license suspended?

18 A Yes.

19 Q That was part of his employment
 20 application?

21 A Right.

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1 one second? You marked as number 5 the cell phone
 2 record?

3 MR. BELSKY: I think number 6.

4 MR. MANN: Or number 6, I'm sorry. I
 5 just want to let you know that's an original too so
 6 we just need to make a copy. I'll keep that. And
 7 the other one, I don't know whether you're going to
 8 mark that or not but the other cell phone record
 9 that I gave you this morning, that's the only copy
 10 that we have of that too.

11 MR. BELSKY: Why don't we mark this as
 12 7? Are these two copies of the same thing?

13 MR. MANN: I don't think so.

14 MR. BELSKY: I'll just combine them.

15 MR. MANN: Yeah, all cell phone records.
 16 MR. BELSKY: I'll combine them with a
 17 stapler and we'll mark that as 7.

18 (Exhibit 7 marked.)

19 MR. BELSKY: Why don't we just have him
 20 identify Number 7?

21 Q Number 7, is that the telephone records

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1 Q And you were aware that he had a prior
 2 accident before coming to your employment?

3 A Correct.

4 Q Why don't you take me through -- and
 5 you're aware that he had a raise in January of the
 6 year of the accident, is that right, a 25 cent
 7 raise?

8 A Oh, an increase, yes.

9 Q First of all, what is the basis of
 10 giving him an increase? I looked at his
 11 performance, they looked like they were all not
 12 excellent but superior, or whatever the category is
 13 below that. How do you determine the raise?

14 A Well, it's determined by a supervisor
 15 who felt he was doing an adequate job, he had had
 16 the one incident but he also had a valid CDL class
 17 A license. Our trucks don't require a class A
 18 license and so we started him out at a base rate
 19 and felt that after three months that he would be
 20 deserving of an increase.

21 MR. MANN: Could I interrupt just for

1 for other employees?

2 A This is actually the cell phone records
 3 from previous dates, from November and December.

4 Q For this driver?

5 A For this driver.

6 MR. MANN: Okay. See, what was the
 7 second part of that? Is that also --

8 THE WITNESS: This is November into
 9 December and this is December into January and the
 10 one in question was mid-January.

11 Q So the only records I have are telephone
 12 records?

13 MR. MANN: No, it's underneath. Where
 14 are the others at? Oh, here it is, here it is.
 15 These are the ones I'm worried about. 7, that's
 16 yours. You must have had that from what I already
 17 provided you. They were the ones I gave you
 18 beforehand.

19 A This is for all other employees.

20 MR. BELSKY: Why don't we mark this as
 21 8? And so 8 is the telephone records for all other

7 (Pages 22 to 25)

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1 employees.

2 A On the date in question, yes.

3 Q Date in question.

4 (Exhibit 8 marked.)

5 Q Let me just clean up a couple of things.

6 So there was no question he was driving for you on
7 the date of the accident?

8 A Correct.

9 Q And he was delivering a load for you?

10 A Uh-huh.

11 Q And do you -- what is the company's
12 policy regarding payment of traffic tickets
13 received by a driver while they are in your
14 employment?

15 A If it was for something that was, in
16 other words, like speeding, seat belt violations,
17 those type of things, the employee is responsible
18 for paying those.

19 Q In this case I understand that the
20 employer received a ticket and paid it. Did you
21 pay it or did the employee pay it?

1 that's incorrect. I have it if you need it. I
2 don't know it by heart.

3 MR. BELSKY: Off the record.

4 (Pause in the proceedings.)

5 A I do not have it. I thought I did.

6 MR. MANN: We'll get you that address.

7 THE WITNESS: Yeah.

8 Q That's fine.

9 A It's Richmond, Virginia, Concrete Place,
10 I just don't know the number. Concrete Place,
11 Richmond, Virginia.

12 Q That's probably fine. It's the same
13 name of the company, it's the same?

14 A Yes.

15 Q When a truck goes -- when this truck --
16 where did this truck leave, what facility did this
17 truck leave from?

18 A Mohler Church Road, which is our
19 corporate office.

20 Q In Pennsylvania?

21 A Yes.

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1 A The employee paid it.

2 Q Do you know whether he was represented
3 by an attorney at the time the ticket was paid?

4 A I do not know.

5 Q Do you know whether anybody provided him
6 with any advice relative to payment of the ticket?

7 A I do not know.

8 Q I show you these photographs. These are
9 photographs of the vehicle. Well, before I do
10 that, did you inspect the vehicle when it came
11 back?

12 A No, I did not.

13 Q Did somebody from the company inspect
14 the vehicle when it came back?

15 A I believe his supervisor did.

16 Q Who was his supervisor?

17 A Bob Brooks.

18 Q Is he still working there?

19 A He works out of our Virginia facility.

20 Q What is that address?

21 A 5150 Innovation Way, no, I'm sorry,

1 Q Now, before a truck goes out is it
2 inspected by the employee?

3 A The drivers do a pretrip inspection,
4 yeah, they do their own.

5 Q Do they sign a pretrip document that
6 they have inspected it?

7 A I believe so, yes.

8 Q Has that been supplied to us in this
9 case, do you know?

10 A I don't think so. I don't know if --

11 MR. MANN: I don't know if there's a
12 written record.

13 A I'm not certain that we would have it
14 that long, I'll have to double-check.

15 Q But there is a written document?

16 A There generally is one.

17 MR. MANN: We'll check for you. When he
18 goes back I'll check.

19 Q And when a truck comes back is it
20 checked by someone to see whether or not there's
21 any damage to it?

8 (Pages 26 to 29)

Page 30

1 **A** The employee is supposed to do a pretrip
 2 and a post trip inspection of the vehicle.

3 **Q** Well, how would you know that damage was
 4 done to a vehicle on his trip if he didn't tell you
 5 about it?

6 **A** The supervisor is supposed to get the
 7 pretrip and post trip and on the post trip it's
 8 supposed to be listed what damage might have been
 9 done if any.

10 **Q** Well, if he doesn't check it out how
 11 does the company know that the employee is being
 12 honest?

13 **A** If he doesn't record the damage?

14 **Q** Yes.

15 **A** It's noted by the supervisor.

16 **Q** So the supervisor has to do his own
 17 inspection?

18 **A** He doesn't do a regular inspection but a
 19 visual inspection if his supervisor happens to see
 20 the truck come in and notice damage on it he would
 21 ask the employee about it.

Page 32

1 **MR. BELSKY:** I don't know if we ever got
 2 color copies. If you have got the original, I
 3 would appreciate it.

4 **MR. MANN:** I'm not sure.

5 **MR. BELSKY:** If you have them that would
 6 be great, if you have color copies because these
 7 aren't as clear as I would like them to be.

8 **MR. MANN:** What do you have there? Just
 9 that one?

10 **MR. BELSKY:** Just that one.

11 **MR. MANN:** Okay. I mean is that --
 12 that's all I have.

13 **MR. BELSKY:** Oh, okay.

14 **MR. MANN:** I think, unless you have
 15 another copy. I'll look for it.

16 **MR. BELSKY:** Well, I have other photos.

17 **MR. MANN:** Let me see and I'll see if I
 18 can find the originals. Are these the ones we
 19 provided to you?

20 **MR. BELSKY:** They are of the truck, so
 21 yes, you provided them to us.

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1 **Q** Okay. So basically you are relying on
 2 the employee to be truthful on what the damage is
 3 to the vehicle when he leaves and when he returns?

4 **A** Generally.

5 **Q** If a vehicle had a damaged rear mirror I
 6 assume it would not go out on the road?

7 **A** Yeah, that's correct. I believe so.

8 **Q** No, it would not go out on the road?

9 **A** Yeah.

10 **Q** All right. And what about black scuff
 11 mark, would that affect the vehicle going out on
 12 the road?

13 **MR. MANN:** Do you know?

14 **A** The black scuff -- if it had a black
 15 scuff mark on it?

16 **Q** Yes, on the bumper.

17 **A** It depends on where it would be. If it
 18 was on the bumper it probably wouldn't affect it,
 19 no.

20 **Q** The company provided me with these
 21 photographs of the vehicle.

Page 33

1 **MR. MANN:** Okay.

2 **MR. BELSKY:** Off the record.

3 (Discussion held off the record.)

4 **MR. MANN:** I have a lot of angles but
 5 some of them don't show the other side of the truck
 6 so I didn't really -- ignore that. I mean unless
 7 you really need them, ignore that writing on there.
 8 That's just the guys. Here is the copies of all
 9 the ones I've got. See, some of them don't show
 10 the area of, you know, they don't even show the
 11 right side of the truck.

12 **MR. BELSKY:** Okay. I'll mark these and
 13 then I'll have them color copied while we're doing
 14 the other deposition.

15 **MR. MANN:** You can do that here?

16 **MR. BELSKY:** No, I'll run somebody out
 17 to do it.

18 **MR. MANN:** Or I can get them and send
 19 them to you.

20 **MR. BELSKY:** I'd just as soon send
 21 somebody out while we're waiting.

9 (Pages 30 to 33)

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1 Q I'm going to show you these photographs
 2 and -- I may have the answer to the question here.
 3 Do you know when these photographs were taken?

4 A I'm not certain, no.

5 Q Okay. The information on the top
 6 indicated it was taken 1-26, '01 I assume?

7 MR. MANN: He wouldn't know anything
 8 about that. That was done by the insurance
 9 company, I can tell you that.

10 MR. BELSKY: Okay. So that's -- okay.

11 Q Did the company do an inspection of the
 12 vehicle when it came back after the accident?

13 A I believe the supervisor did.

14 Q And what did that show?

15 A To my knowledge it showed the damage,
 16 there was a damaged mirror and some other damage
 17 that needed to be repaired.

18 Q Was a report made?

19 A A report made?

20 Q Of the damage to the vehicle.

21 A There was -- I don't know that a report

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1 pictures.

2 MR. BELSKY: Okay.

3 MR. MANN: And you can mark that and
 4 make a copy of it.

5 MR. BELSKY: Okay.

6 MR. MANN: It was below the deductible.

7 MR. BELSKY: Why don't you mark this as
 8 10?

9 (Exhibit 10 marked.)

10 Q Pardon me while I read this.

11 A That's fine.

12 MR. MANN: Off the record.

13 (Discussion held off the record.)

14 MR. BELSKY: Could you tell me who took
 15 these pictures?

16 MR. MANN: That's the insurer, that
 17 would be whoever I identified that's doing the
 18 investigation.

19 MR. BELSKY: Okay.

20 MR. MANN: I can tell you from the
 21 documents.

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1 was made of the damage. We, we leased the truck
 2 through Ryder and generally there, whenever there's
 3 damage to a vehicle that needs to be repaired we
 4 take it out of service and we call Ryder and Ryder
 5 repairs it then.

6 Q Okay.

7 MR. BELSKY: Is that in the Ryder
 8 documents?

9 MR. MANN: No, I don't think we've seen
 10 it, I don't think we have it. Whatever they did to
 11 the truck they did. I don't know if they had to do
 12 anything to the truck, Ryder I'm talking about.

13 MR. BELSKY: Okay. Why don't we mark
 14 this as a group as Exhibit Number 9?

15 (Exhibit 9 marked.)

16 MR. BELSKY: Exhibit 9 is two loose
 17 photographs and six photographs that are on blue
 18 purple type of backing.

19 MR. MANN: Actually I do have, I don't
 20 think this is part of their file but I do have, I
 21 think this was done by the guy who took those

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1 MR. BELSKY: Do you have the color
 2 copies of those too?

3 MR. MANN: Yes. These are the ones I
 4 gave you at the deposition.

5 MR. BELSKY: Okay. Do you want to put
 6 them on a pile and that way I'll get them all color
 7 copied?

8 Q Just to clear things up I'm going to
 9 show you these photographs which were marked in
 10 Mr. Curtis' Deposition Exhibit 2. Have you ever
 11 seen those photographs before?

12 A I just saw them for the first time about
 13 20 minutes ago.

14 Q Okay.

15 MR. MANN: They were taken by Mr. Dixon,
 16 who was identified in the Answers to
 17 Interrogatories.

18 Q That's not part of your investigation?

19 A No.

20 Q You never identified the point of impact
 21 of the accident?

10 (Pages 34 to 37)

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1 **A** No.

2 MR. BELSKY: Put them on the pile.

3 MR. MANN: Okay.

4 (Pause in the proceedings.)

5 Q Now, my understanding in reading some of
6 your personnel information was that a bonus was
7 given out for good driving to employees?8 **A** That's correct.9 Q Did Mr. Martin ever receive a bonus for
10 good driving?11 **A** No.12 Q And how, what is the criteria for good
13 driving bonus?14 **A** First of all the individual has to be
15 employed for a complete quarter, full three months
16 of the calendar quarter year and then secondly they
17 have to be, have no accidents where they were at
18 fault and/or if they do have an accident, less than
19 250 dollars in damage I believe it was.20 Q The, and how long had he -- he had been
21 there for a quarter, had he not?1 **A** No.

2 Q Explain to me the cell phone policy.

3 **A** The drivers all have cell phones that
4 they can use, they're delivery drivers, we deliver
5 to residential customers as well as to stores, so
6 if they would be near a customer but were given bad
7 directions or something they use their cell phones
8 to call and find out where they're at or where they
9 need to be.10 Q Is this a phone that you provide the
11 driver?12 **A** Yes, uh-huh.13 Q Do some of the drivers have their own
14 personal cell phones?15 **A** I think one or two.16 Q And what is the policy regarding how
17 they would notify you they have their personal cell
18 phone, would they have to notify you?19 **A** They wouldn't have to notify us.20 Q Do you know whether Mr. Martin had a
21 personal cell phone?

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1 **A** No. He had only been, I think his hire
2 date was October 2nd and so it wasn't a complete
3 calendar quarter, we do it by calendar quarters.4 Q Okay. So the calendar quarter meaning
5 he would have to go from January, February, March?6 **A** Right, correct, before he would have
7 been eligible.8 Q He wouldn't have qualified because he
9 had the accident?10 **A** For which, I'm sorry?11 Q For this accident would this have
12 knocked his qualifications down or not?13 **A** It would depend on if the, if he was
14 determined to be at fault and if he was determined
15 to be at fault then he wouldn't have been eligible
16 for it.17 Q Did the company ever make that
18 determination?

19 MR. MANN: Objection.

20 **A** No.

21 Q For that purpose?

1 **A** I do not know, I don't believe he did
2 but he may have, I just don't know.

3 Q Did you ever ask him that question?

4 **A** No.5 Q Mr. Martin had indicated at his
6 deposition that the only damage that he saw was to
7 the mirror. Did he ever offer an explanation to
8 you why the mirror was broken?9 **A** He, I believe he said it was as a result
10 of his incident. It was in our discussion when I
11 talked to him when he had called he said that --

12 MR. MANN: You answered the question.

13 Objection.

14 MR. BELSKY: Are you instructing him not
15 to answer when he called?16 MR. MANN: He answered the question, he
17 said --18 Q Okay. What else did he tell you when he
19 first called you?20 MR. MANN: Objection for the same reason
21 as stated before.

11 (Pages 38 to 41)

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1 MR. BELSKY: Are you instructing him not
2 to answer?

3 MR. MANN: Yes.

4 Q This call to you was before you even
5 notified the insurance carrier?

6 A Yes.

7 MR. BELSKY: Is that still your
8 position?

9 MR. MANN: Yes. He testified it was for
10 the purpose of notifying the insurance carrier.

11 MR. BELSKY: Okay.

12 Q Did he ever explain to you what the
13 bumper problem was caused by?

14 A No.

15 Q The pictures that we showed, those are
16 the ones involved in this accident I assume?

17 A I assume.

18 Q All right.

19 MR. MANN: He didn't take them.

20 MR. BELSKY: I know, I thought there
21 might be some kind of identifying mark, you know.

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1 (Exhibit 11 marked.)

2 Q Okay. So he fills out this application
3 that's been marked as Exhibit 11?

4 A Yes, that's correct.

5 Q And he indicated in this application
6 that he was involved in a prior accident; is that
7 correct?

8 A Yes, uh-huh.

9 Q Did you investigate when that accident
10 was?

11 A What do you mean did we investigate?

12 Q Well, when he filled out --

13 A We talked to him about it.

14 Q Okay. And what did he say?

15 A He said that he had been, had made a
16 mistake, he was driving too fast, he was driving a,
17 I think a tanker, a milk truck or something like
18 that and the roads were wet.

19 Q Did he say when that happened?

20 A I believe he said it was in July of
21 2000.

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1 Q Now, tell me the process in which
2 Mr. Martin was hired. Do you have his personnel
3 file with you?

4 A Yes.

5 Q Why don't you take a look at his
6 personnel file.

7 A Okay.

8 Q Take us step by step how the hiring
9 process works.

10 A Okay. Well, he completed an
11 application.

12 Q Could I see the application?

13 A Sure.

14 MR. MANN: I believe you've already got
15 a copy of that.

16 MR. BELSKY: Because it's back and
17 front, I know you gave them to me, but I'm going to
18 have it marked and we'll put it on the pile.

19 MR. MANN: Okay.

20 MR. BELSKY: All right. Could you mark
21 this as Exhibit 11?

1 Q Does it show anywhere on that report?

2 A It's on one of the other, his other

3 applications.

4 Q Can you show me the document that it's
5 on? I honestly didn't see it, but, again, I don't
6 know what I'm looking at.

7 (Document tendered.)

8 MR. MANN: Which one are you looking at
9 now so I can just see?

10 MR. BELSKY: The one marked Ryder.

11 MR. MANN: Okay. Ryder. You have that
12 one too.

13 MR. BELSKY: I'm sure I do. I just
14 don't know what I'm looking at when I see these
15 documents, that's why I need them explained to me.
16 Okay. Why don't we have this marked as 12?

17 (Exhibit 12 marked.)

18 Q What's marked as Exhibit 12, where did
19 you acquire that from?

20 A This he completed after his initial
21 hiring, this is a, something, or a job offer had

12 (Pages 42 to 45)

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1 **been made then he completes this.**

2 Q So he completed that?

3 A Yes.

4 Q Maybe I missed something. So you
5 didn't -- it wasn't a Ryder truck that was involved
6 in that accident?

7 A I'm sorry?

8 Q We talked about --

9 A In this accident, no, no. This is
10 his --

11 Q Okay. Go ahead.

12 A This is his application, this is an
13 extension of his application.

14 Q Okay. Can I see it then?

15 A Uh-huh.

16 Q What if any follow-up did you do to find
17 out more specific facts regarding this prior
18 accident?

19 A We sent a letter to his previous
20 employers.

21 Q And did you receive responses to those?

1 A Uh-huh.

2 Q Okay. It said that he backed into two
3 milk houses at farms?

4 A Uh-huh.

5 Q And it said he jackknifed on wet road
6 and hit a car coming in opposite direction?

7 A Uh-huh.

8 Q And he had a heavy foot, I assume that
9 means he was a speeder?

10 A I don't know what that means.

11 Q You don't know what a heavy foot is?

12 A I think it's subjective, what one person
13 may determine to be a heavy foot as another.

14 Q But what does the term mean in trucking?

15 MR. MANN: I object to that. He doesn't
16 know what they meant.

17 Q Do you know what it means?

18 A In general I would think a heavy foot
19 means that somebody speeds but I think it's
20 subjective in terms of who decides that.

21 Q Did you investigate these incidences any

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1 A Yes.

2 Q Can I see those?

3 A Sure.

4 Q The fact that these forms say Ryder on
5 it, what is the significance of that?

6 A There is none, Ryder provides us with
7 the driver qualification file and with blank copies
8 of all the forms.

9 Q So this is sort of a give me from them
10 to you for --

11 A Right. We purchase them from them, from
12 Ryder to do our --

13 Q On the one that we're talking about,
14 name of previous employer, Neo Plan, USA.

15 A Uh-huh.

16 Q I don't see any information they gave
17 you. Is that a fair statement, they gave you no
18 information regarding him?

19 A Right.

20 Q Okay. And the information that was
21 given to you by Clouse Trucking?

1 more than the information you got back from --

2 A No.

3 Q -- Clouse? So you don't know the dates
4 of these incidences?

5 A No.

6 MR. BELSKY: Have I marked those? Okay.
7 Why don't we mark this?

8 (Exhibit 13 marked.)

9 Q Are these the only two responses you got
10 from previous prior employers?

11 A Yes.

12 Q There were more prior employers?

13 A Yes.

14 Q How many prior employers were there?

15 A I believe from -- do we have his
16 application? He has listed down one other one
17 other than being self-employed.

18 Q Okay. The one other one was --

19 A United Sleep Product.

20 Q United Sleep Product. And he wasn't a
21 driver for that company?

13 (Pages 46 to 49)

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1 A Not that we're aware of.

2 Q Okay. And then he went into landscaping
3 in '97. There came a time in his prior history
4 that he had lost his license. Did he tell you that
5 he lost his license on the application?

6 A It was on his, it was listed on his
7 application that he had lost it due to points
8 violations.

9 Q Okay. And did you make an inquiry as to
10 what the points violations were?

11 A I don't remember.

12 Q I think that they were supplied. Have
13 you ever seen that document?

14 A Oh, yes, this is his MVR, his motor
15 vehicle record.

16 Q And can you tell me what it says?

17 A It says that he had a violation

18 September 3rd of '98 for exceeding the maximum
19 speed.

20 Q Anything else?

21 A And then he had a suspension as a result

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1 qualifies him his prior record is not important to
2 you?

3 A No, I'm not saying that, I'm saying that
4 the state had qualified him for a CDL and we looked
5 at his prior record, he had talked about the one
6 incident that he had had recently, the speeding
7 violation was from '98 and we felt he had come with
8 two good references.

9 Q The good references being the one person
10 that didn't say anything?

11 A No, no, no, from other employees.

12 Q Oh, other employees.

13 A Uh-huh.

14 Q Do you have those with you? I think I
15 have those here, I just want to make sure.

16 A It was verbal references, there was two
17 guys that were employees with us that went to his
18 church, went to church with him.

19 Q Do you know who they were?

20 A Bob Brooks and Allan Roden.

21 Q If it's on the back of this form they

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1 of that.

2 Q Just the one violation?

3 A He had the suspension then he had the
4 driving too fast for conditions July 19th.

5 Q Okay. What if any -- I ask this be
6 marked as the next exhibit.

7 (Exhibit 14 marked.)

8 MR. BELSKY: So this document is marked
9 as Exhibit Number 14.

10 MR. MANN: I don't need a copy of that
11 one. That was from your file.

12 MR. BELSKY: Right.

13 Q What if any impact did this have on his
14 application for employment?

15 A None at that point. We had, he had
16 talked to us about his incident, he had a valid CDL
17 class A license that he had gotten in September of
18 2000 and so we felt that he was a valid qualified
19 driver. He had, the state had just certified him
20 for CDL and we don't require CDL.

21 Q So what you're saying is if the state

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1 were written --

2 A It's back on the --

3 Q I'm sorry?

4 A It's on his application, on the back
5 part of the application that I have it listed that
6 he knows Bob Brooks and I think it's referenced on
7 the third page.

8 Q Okay. So on the employment application
9 it has the reference on the back, remarks,
10 excellent candidate, enjoys driving, feels like he
11 has leadership potential. Is that what you're
12 referring to?

13 A Yeah.

14 Q I'm going to show you this document and
15 maybe you can tell me what this is.

16 A Okay. This is the same one we just
17 looked at, it's part of his application. This is
18 the Ryder form.

19 Q Okay. Let me just make sure.

20 A That's this one. Exhibit 12 I guess.

21 Q Can you tell me the date that he got his

14 (Pages 50 to 53)

1 license back after suspension?

2 **A They restored it February 11th of '99.**

3 Q All right. So we were going through the
4 process, he fills out an application and then
5 what's the next step that you take as far as
6 deciding whether to hire him or not?

7 **A He filled out the application, I
interviewed him.**

8 Q Okay. And there's no form of the
9 interview. Is there any written notes?

10 **A Just the notes on the back of the
application.**

11 Q The notes on the back of the application
12 which you already spoke about.

13 **A Uh-huh.**

14 Q Does he get a physical examination?

15 **A Yes.**

16 Q Who does the physical examination?

17 **A A company, Physician Crossroads Family
Medical Center.**

18 Q And who pays for that?

1 **A Same organization.**

2 Q Great. Okay. So we have him physical
3 examined and the company does not get a report back
4 or it's just not in the file?

5 **A We get, there's a medical examiner's
certificate that stated that he's cleared with
corrective lenses.**

6 Q Let me make sure I have that here.

7 Q Okay. Let me see what you have got. I know I have
8 it.

9 (Document tendered.)

10 MR. BELSKY: All right. Why don't we
11 mark this and we'll give it back to him? This is
12 the copy of the Social Security number and the
13 medical examiner's certificate.

14 (Exhibit 15 marked.)

15 Q Okay. So we have an exam. Does he go
16 out for a road test?

17 **A Generally he goes out for a road test,
he goes along with another driver first of all to,
as a ride along, what we call a ride along, where**

1 **A We do, the company does.**

2 Q And is part of that examination an eye
3 examination?

4 **A I believe so, yeah.**

5 Q Do you have a copy of that report?

6 **A No, I do not have a copy of that. I see
a drug screen. The medical facility would have a
copy.**

7 Q What is the name of the medical
8 facility?

9 **A Crossroads Family Medical Center.**

10 Q Where are they located at?

11 **A They're in Brownstown, Pennsylvania.**

12 MR. MANN: You do have this document,
13 which is the only one we have that has got
14 Crossroads Family Medical Center on it.

15 MR. BELSKY: The drug screen?

16 MR. MANN: Yes.

17 MR. BELSKY: Yes, I do have that.

18 MR. MANN: It's the same company,
19 same --

1 **he watches, helps, that type of thing.**

2 Q Okay. And did he do okay on that?

3 **A Yeah, I believe so.**

4 Q Is there a report that's generated by
5 that?

6 **A I don't have that, no.**

7 Q You don't have it or there is no such
8 report?

9 **A There is and, but I don't have one
10 listed in his file.**

11 Q Okay. Is there a reason why we don't
12 have that one?

13 **A I'm not certain, no.**

14 Q There's also a written test?

15 **A That's a part of that. The written
16 test, I don't know that we have one.**

17 Q All right. Here. I'll give you this
18 back.

19 **A Oh, okay.**

20 Q I'll take this out of this pile and put
21 it in this pile and then you can have that back.

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1 STATE OF MARYLAND, COUNTY OF CARROLL:
2 I, Sharon A. Beaty, a Notary Public in and
3 for the State of Maryland, County of Carroll, do
4 hereby certify the within named BRENT KEENER
5 personally appeared before me at the time and place
6 herein set out and, after having been duly sworn by
7 me according to law, was interrogated by counsel.

8 I further certify that the examination was
9 recorded stenographically by me and then
10 transcribed from my stenographic notes to the
11 within typewritten matter in a true and accurate
12 manner. I further certify that the stipulations
13 contained herein were entered into by counsel in my
14 presence. I further certify that I am not of
15 counsel to any of the parties, nor an employee of
16 counsel, nor related to any of the parties, nor in
17 any way interested in the outcome of this action.

18 AS WITNESS my hand and notarial seal this
17th day of February, 2003, at Baltimore, Maryland.

19

20

21 Sharon A. Beaty, Notary Public

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